



Order Filed on April 2, 2020
by Clerk
U.S. Bankruptcy Court
District of New Jersey

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

**Caption in Compliance with D.N.J. LBR
9004-2(c)**

ABELSON & TRUESDALE

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In re

DIANA WAHER-SALA,

Debtor.

Chapter 13

Case No. 19-33261

Judge: Hon. Christine M. Gravelle

**STIPULATION AND CONSENT ORDER RESOLVING OBJECTIONS OF
INTERNAL REVENUE SERVICE TO: (I) DEBTOR'S CHAPTER 13 PLAN
AND (II) DEBTOR'S MOTION TO EXPAND AUTOMATIC STAY**

The relief set forth on the following pages, numbered two (2) through seven (7) are
hereby **ORDERED**

DATED: April 2, 2020

A handwritten signature in black ink, reading "Christine M. Gravelle".

Honorable Christine M. Gravelle
United States Bankruptcy Judge

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Debtor: Diana Waher-Sala

Bankr. Petition No. 19-33261

Caption of Order: Stipulation & Consent Order Resolving Objections of Internal Revenue Service to (I) Debtor's Chapter 13 Plan and (II) Debtor's Motion to Expand Automatic Stay

WHEREAS the debtor Diana Waher-Sala (the "Debtor"), and creditor, United States Internal Revenue Service (the "Service"), wish to enter into the following stipulation and consent order pertaining to: (i) the Debtor's proposed chapter 13 plan (the "Plan") [ECF Doc. No. 3] and (ii) the Debtor's Motion to Enforce and/or Extend the Automatic Stay to Lil Sprouts Educational Center, Inc. (the "Motion") [ECF Doc. No. 24];

WHEREAS Lil Sprouts Educational Center, Inc. is the Debtor's wholly-owned, non-debtor corporation (the "Corporation");

WHEREAS the Corporation has liabilities to the Service totaling \$51,108.89, which amount is secured by federal tax liens filed against the Corporation (the "Secured Corporate Liability");

WHEREAS the Secured Corporate Liability is not included in proof of claim filed against the Debtor by the Service (Claim No. 5) (the "Service Claim"), nor is the Secured Corporate Liability currently provided for in the Plan;

WHEREAS the Corporation's failure to, *inter alia*, make required federal tax payments and deposits due under Form 940 (Employer's Annual Federal Unemployment Tax Return) and Form 941 (Employer's Quarterly Tax Return) has caused the Service to take collection and enforcement actions against the Corporation and the assets of the Corporation, including the issuance of federal tax levies;

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WHEREAS the Debtor is also the owner of an entity known as Precious Moments Child Care, which is operated as a sole proprietorship (the "Sole Proprietorship");

WHEREAS the Motion proposes to extend the automatic stay of 11 U.S.C. § 362 (the "Automatic Stay") to the non-debtor Corporation;

WHEREAS the position of the Service is that, absent the Service's consent, the Motion is improper because: (i) the assets of a debtor's wholly owned, non-debtor corporation are not part of a debtor's bankruptcy estate and, as a result, the Automatic Stay does not apply by its own terms; (ii) an extension of the Automatic Stay to a debtor's wholly-owned, non-debtor corporation (through 11 U.S.C. § 105(a) or otherwise) is unavailable and impermissible in chapter 13 cases; (iii) a request to extend the Automatic Stay to a debtor's wholly-owned, non-debtor corporation (through 11 U.S.C. § 105(a) or otherwise) requires the initiation of an adversary proceeding; (iv) even assuming that the extension of the Automatic Stay to a debtor's wholly-owned, non-debtor corporation (through 11 U.S.C. § 105(a) or otherwise) were statutorily and procedurally possible in this context, the Debtor has not met her burden for obtaining such extraordinary relief as it pertains to the Service; and (v) using the Debtor's bankruptcy case to enjoin the Service from collecting the Secured Corporate Liability is impermissible because the Secured Corporate Liability is not, at present, being provided for in the Plan;

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WHEREAS the Service and the Debtor have agreed to the terms and conditions by which the Service will voluntarily forbear from taking collection action against the Corporation and the assets of the Corporation with respect to the Secured Corporate Liability.

IT IS HEREBY STIPULATED AND ORDERED AS FOLLOWS:

1. Subject to the terms of this Order, the Service consents to the entry of Debtor's Motion to Extend the Automatic Stay to the Corporation.
2. The Service shall voluntarily forbear from taking collection action against the Corporation and the assets of the Corporation on account of the Secured Corporate Liability so long as the following terms and conditions are met:
 - a. The Plan shall provide for the payment of post-confirmation interest on the secured portion of the Service Claim (Claim No. 5) as follows: \$37,598.59 in principal, plus post-confirmation interest of \$4,973.32 (calculated at the governing statutory rate of 5%) for a total Plan payment on the secured portion of the Service Claim of \$42,571.91.
 - b. In addition to payment of the Service Claim, the Debtor shall pay the Secured Corporate Liability in full through the Plan, plus post confirmation interest of \$6,760.38 (calculated at the governing statutory rate of 5%) for a total Plan payment on the Secured

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Corporate Liability of \$57,869.27.

- c. The Debtor shall cause the Corporation and the Sole Proprietorship to comply with all applicable requirements of federal tax law.

Without limiting the generality of the foregoing:

- i. The Debtor shall cause the Corporation to file Forms 940 and 941 for the period ending December 31, 2019 within 7-days of entry of this stipulation and consent order;
- ii. On a going forward basis, the Debtor shall cause the Corporation and the Sole Proprietorship to timely file all required federal tax returns, including, without limitation, Forms 940 and 941 as and when they become due; to that end:
 1. The Debtor shall cause signed copies of all returns to be sent by facsimile to IRS Revenue Officer Angela Kirchner at the following facsimile number: (855) 589-6563; if a return is electronically filed, the Debtor shall cause proof of such electronic filing to be sent IRS Revenue Officer Angela Kirchner at the same facsimile number. In each instance, such information must be sent no later than the due date for each return;

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iii. On a going forward basis, and independent of the Debtor's obligation to pay of the Secured Corporate Liability under the Plan, the Debtor shall cause the Corporation and the Sole Proprietorship to timely pay all federal taxes owing by the Corporation and the Sole Proprietorship as and when they become due, including, without limitation, all tax payments and tax deposits due in connection with Forms 940 and 941; to that end:

1. The Debtor shall cause the Corporation and the Sole Proprietorship to make federal tax deposits no later than the fifteenth (15th) day of each month;
2. Upon the making of each federal tax deposit, the Debtor shall send a copy of the Electronic Federal Tax Payment System (EFTPS) confirmation by facsimile to IRS Revenue Officer Angela Kirchner at the following facsimile number: (855) 589-6563.
3. To the extent the Debtor fails to abide by any of the foregoing terms and conditions and thereafter fails to cure such failure within five (5) business days after counsel for the Service notifies counsel for the Debtor of the same: (i) the Service shall be permitted to take any and all available collection and enforcement

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actions against the Corporation or the assets of the Corporation with respect to any and all liabilities of the Corporation to the Service and (ii) the Service shall not be subject to any stay order entered by the Court regarding the Corporation or the assets of the Corporation.

4. For the avoidance of doubt, in the event of any inconsistency between this stipulation and consent order and any order granting the Motion, the terms of this stipulation and consent order shall control.

SO STIPULATED AND AGREED:

Dated: March 13, 2020

Dated: March __, 2020

CRAIG CARPENITO
UNITED STATES ATTORNEY
DISTRICT OF NEW JERSEY

DIANA WAHER-SALA



Digitally signed by EAMONN
O'HAGAN
Date: 2020.03.13 10:15:40 -04'00'

/s/ Diana Waher-Sala

Eamonn O'Hagan, AUSA

Debtor

Attorney to the United States of America

Dated: March 13, 2020

DIANA WAHER-SALA



Steven J. Abelson

Counsel for the Debtor